

United States *f*
Circuit Court of Appeals
For the Ninth Circuit.

LEROY POWERS, Otherwise Known as ROY
POWERS,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
Eastern District of Washington, Northern Division.

FILED

JUL 3 - 1923

U. S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

United States
Circuit Court of Appeals

For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

FRANK R. JEFFREY, United States District Attorney for the Eastern District of Washington, Federal Building, Spokane, Washington,

H. SYLVESTER GARVIN, Assistant United States Attorney for the Eastern District of Washington, Federal Building, Spokane, Washington,

Attorneys for Plaintiff and Defendant in Error.

POWELL & HERMAN, Paulson Building, Spokane, Washington,

MUNTER & MUNTER, Empire State Building, Spokane, Washington,

Attorneys for Defendant Leroy Powers, Plaintiff in Error. [2*]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER, J. GUY DUNGAN, JESSE B. COOKE, *alias* DICK COOKE, R. F. CARPENTER, LEROY POWERS and JOHN WOODS,

Defendants.

*Page-number appearing at foot of page of original certified Transcript of Record.

Indictment.**COUNT I.**

The Grand Jurors of the United States, chosen, selected and sworn in and for the Northern Division of the Eastern District of Washington, upon their oaths present:

That heretofore, to wit: on or about the first day of May, 1921, the exact date being to the Grand Jurors unknown, in Ferry County, in the State and Eastern District of Washington, the exact place being to the Grand Jurors unknown, Cline Ledgerwood, Thomas Parker, J. Guy Dungan, Jesse B. Cooke, *alias* Dick Cook, R. F. Carpenter, LeRoy Powers and John Woods, whose other or true names are to the Grand Jurors unknown, defendants herein, did then and there wilfully, unlawfully and feloniously conspire, confederate and agree together and with divers other persons to the Grand Jurors unknown, to commit the acts made offenses and crimes by the laws of the United States, to wit: the Act of Congress of October 28, 1919, known as the National Prohibition Act; that is to say, the defendants did then and there wilfully, unlawfully and feloniously conspire, confederate and agree together and with divers other persons to the Grand Jurors unknown (all of the said individuals, including the said [3] defendants and the said divers other persons, being hereinafter in this indictment called "conspirators," and who are intended and referred to wher-

ever the word conspirators may hereafter appear); to devise and execute a scheme whereby they, the said conspirators, working in conjunction with each other would procure and cause to be procured for their intended use intoxicating liquors of various varieties for the purpose of possessing the same for beverage purposes, as they the said conspirators might deem fit and proper with the intention of selling, bartering, exchanging, giving away and furnishing; that is, the said conspirators conspired and agreed together to possess intoxicating liquors containing more than one-half of one per centum of alcohol by volume and the same being then and there fit for beverage purposes, within the State and Eastern District of Washington, without they or any one of them having first obtained a permit to so possess intoxicating liquors, as is required by law to be obtained.

And the Grand Jurors aforesaid do further present and find:

That the said conspirators did on or about the 27th day of July, 1922, at Republic, Ferry County, in the Eastern District of Washington, and within the jurisdiction of this court, renew and continue the said conspiracy, and that in pursuance of the said unlawful and felonious conspiracy, combination, confederation and agreement, it was furthermore a part of the said conspiracy that they would assist others who might be engaged in the illegal possession of intoxicating liquor, in violation of the National Prohibition Act, and that they would provide a safe place for the temporary storing, keeping and

concealment of intoxicating liquors that was owned and possessed by themselves or other persons to the Grand Jurors unknown. [4]

And the Grand Jurors aforesaid do further find and present:

That the aforesaid wilful, unlawful and felonious conspiracy, combination and agreement, as aforesaid, was formed on or about the first day of May, 1921, in Ferry County within the State and Eastern District of Washington (the exact place being to the Grand Jurors unknown), and that it was furthermore a part of the said scheme that the conspiracy was to be a continuing one, and it was continued in existence, operation and execution from about the first day of May, 1921, until the seventh day of August, 1922, and that at all times between the said dates the said defendants and the divers persons to the Grand Jurors unknown, did continue to wilfully, unlawfully and feloniously conspire, confederate and agree together to commit the acts hereinafter set forth in detail.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That in pursuance to the said unlawful and felonious conspiracy, combination and agreement and to effect the object of the same the said conspirators did wilfully and unlawfully perform and do the following acts:

I.

That on or about the 26th day of July, 1922, in Republic, Ferry County, in the State and Eastern District of Washington, and within the jurisdiction

of this court, the said conspirators did wilfully and unlawfully keep and conceal about twenty (20) cases of intoxicating liquor, the exact amount of which is to the Grand Jurors unknown, said intoxicating liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there being fit for beverage purposes, said intoxicating liquor being the property of certain persons named Joseph H. Frankel and Henry Dapper. [5]

II.

That on or about the 27th day of July, 1922, at Republic, Ferry County, in the State and Eastern District of Washington, and within the jurisdiction of this court, the said conspirators did wilfully and unlawfully steal from Joseph H. Frankel and Henry Dapper about twenty (20) cases of intoxicating liquor (the exact amount of which is to the Grand Jurors unknown) said intoxicating liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there being fit for beverage purposes.

III.

That on or about the 27th day of July, 1922, at Republic, Ferry County, in the State and Eastern District of Washington and within the jurisdiction of this court, the said conspirators did wilfully and unlawfully possess about twenty (20) cases of intoxicating liquor (the exact amount of which is to the Grand Jurors unknown), said intoxicating liquor then and there containing more than one-half of one

per centum of alcohol by volume and then and there being fit for beverage purposes.

Contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States.

COUNT II.

And the Grand Jurors aforesaid, upon their oaths aforesaid do further present:

That heretofore, to wit: on or about the 1st day of May, 1921, the exact date being to the Grand Jurors unknown, in Ferry County, in the State and Eastern District of Washington, the exact place being to the Grand Jurors unknown, Cline Ledgerwood, Thomas Barker, J. Guy Dungan, Jesse B. Cooke, *alias* Dick Cooke, R. F. Carpenter, Leroy Powers and [6] John Woods, whose other or true names are to the Grand Jurors unknown, defendants herein, did then and there wilfully, unlawfully and feloniously conspire, confederate and agree together and with divers other persons to the Grand Jurors unknown to commit the acts made offenses and crimes by the laws of the United States, to wit: the Act of Congress of October 28, 1919, known as the National Prohibition Act; that is to say, the defendants did then and there wilfully, unlawfully and feloniously conspire, confederate and agree together and with divers other persons to the Grand Jurors unknown (all of the said individuals, including the said defendants and the said divers other persons, being hereafter in this indictment called "conspirators," and who are intended and referred to whenever the word conspirators may hereafter appear),

that they, the said conspirators, working in conjunction with each other would aid, abet and counsel certain persons who were engaged in the unlawful possession and transportation of liquor from the Dominion of Canada into the United States of America, and particularly in Ferry County in the Eastern District of Washington and within the jurisdiction of this court; it was a part of the said unlawful and felonious conspiracy so entered into by the said conspirators that they would become acquainted with persons engaged in the unlawful liquor traffic and commonly known as or termed "bootleggers" and offer to aid and assist them and guarantee them protection while in transit through the said County of Ferry, in the State of Washington; that they, the said conspirators would furnish automobiles to transport the liquor from a point near the American line to and into the Town of Republic, and that some of the said conspirators would accompany the person or persons engaged in the bootlegging business so as to afford [7] them proper security and protection in their unlawful business; that they would collect from the various bootleggers sums of money for such service as they would render in assisting them in the actual transportation of intoxicating liquor within the State and Eastern District of Washington without they or any one of them having first obtained a permit to transport intoxicating liquors, as is required by law to be obtained.

And the Grand Jurors do further find and present:

That the said conspirators did on or about the 22d day of May, 1922, in Ferry County, in the Eastern District of Washington, and within the jurisdiction of this court, renew and continue the said conspiracy and that in pursuance of the said unlawful and felonious conspiracy, combination, confederation and agreement it was furthermore a part of the said conspiracy that they would assist, aid and abet certain persons engaged in the illegal transportation of intoxicating liquors, containing more than one-half of one per centum of alcohol by volume, being then and there fit for beverage purposes, in violation of the National Prohibition Act.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That the aforesaid willful, unlawful and felonious conspiracy, combination and agreement, as aforesaid, was formed on or about the first day of May, 1921, in Ferry County within the State and Eastern District of Washington (the exact time being to the Grand Jurors unknown); that it was a part of the said scheme that the said conspiracy was to be a continuing one and it was continued in existence, operation and execution from about the first day of May, 1921, until the seventh day of August, 1922, and that at all times between the said dates the said defendants and the divers other persons to the Grand Jurors unknown, did continue to wilfully, [8] unlawfully and feloniously conspire, combine, confederate and agree together to commit the acts hereinafter set forth in detail.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That in pursuance of the said unlawful and felonious conspiracy, combination and agreement and to effect the object of the same, that on or about the dates hereinafter designated, in Ferry County, within the State and Eastern District of Washington, and within the jurisdiction of this court, the said conspirators did wilfully and unlawfully perform and do the following acts:

I.

That on or about the 24th day of May, 1922, in Ferry County, in the State and Eastern District of Washington, and within the jurisdiction of this court, the said conspirators did willfully assist, aid and abet in the transportation of about ten (10) cases of intoxicating liquor, the exact amount of which is to the Grand Jurors unknown, from a point near the Canadian line in Ferry County to and into the Town of Republic, the said intoxicating liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there being fit for beverage purposes.

II.

That on or about the 10th day of July, 1922, in Ferry County, in the State and Eastern District of Washington, and within the jurisdiction of this court, the said conspirators did wilfully and unlawfully assist, aid and abet in the transportation of about fifteen (15) cases of whisky, the exact amount of which is to the Grand Jurors unknown, from a point near the Canadian line, in Ferry County, to

and into the Town [9] of Republic, the said intoxicating liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there being fit for beverage purposes.

III.

That on or about the 28th day of July, 1922, in Ferry County, in the State and Eastern District of Washington, and within the jurisdiction of this Court, the said conspirators did willfully and unlawfully assist, aid and abet in the transportation of about (20) cases of whisky, the exact amount of which is to the Grand Jurors unknown, from a point near the Canadian line in Ferry County to and into the Town of Republic, the said intoxicating liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there being fit for beverage purposes.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT III.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to wit: on or about the 1st day of May, 1921, the exact date being to the Grand Jurors unknown, in Ferry County, in the State and Eastern District of Washington, the exact place being to the Grand Jurors unknown, Cline Ledgerwood, Thomas Barker, J. Guy Dungan, Jesse B. Cooke, *alias* Dick Cooke, R. F. Carpenter, Leroy Powers and John Woods, whose other or true names are to the Grand Jurors unknown, defendants

herein, did then and there wilfully, unlawfully and feloniously conspire, confederate and agree together and with divers other persons to the Grand Jurors unknown to commit the acts made offenses and crimes by the laws of the United States, to wit: the Act of Congress of March 3, 1917, [10] (39 Stats. 1069), known as the Reed "Bone Dry" Amendment; that is to say, the defendants did then and there wilfully, unlawfully and feloniously conspire, confederate and agree together and with divers other persons to the Grand Jurors unknown (all of the said individuals, including the said defendants and the said divers other persons, being hereafter in this indictment called "conspirators," and who are intended and referred to wherever the word conspirators may hereafter appear), that they, the said conspirators, working in conjunction with each other, did aid, abet and counsel certain persons who were engaged in the unlawful transportation of liquor from the State of Washington into other states, and particularly into the city of Portland, in the State of Oregon; it is furthermore a part of the said unlawful and felonious conspiracy, so entered into by the said conspirators, that they would become acquainted with persons who were engaged in the unlawful transportation of intoxicating liquor and in pursuance of the said unlawful conspiracy that they, the said conspirators, would aid and assist them in the transporting and in causing to be transported in interstate commerce quantities of intoxicating liquor from the town of Republic, in Ferry County, in the State and Eastern District of Washington and

within the jurisdiction of this court, to and into the city of Portland, in the State and District of Oregon, via the Great Northern Railway Company and connecting railways, the said Great Northern Railway Company and the said connecting railways then and there being engaged in interstate commerce by lines of railway in the States of Washington and Oregon, and the laws of the State of Oregon prohibiting the manufacture and sale therein of intoxicating liquor for beverage purposes, and the said intoxicating liquor not being transported, as aforesaid, for [11] scientific, sacramental, medicinal and mechanical purposes, and the Grand Jurors do further find and present that the said conspirators did on or about the 25th day of May, 1922, at Republic, in Ferry County, in the State of Washington, and within the jurisdiction of this court, renew and continue the said conspiracy, and that the aforesaid wilful, unlawful and felonious conspiracy, combination and agreement, as aforesaid, was formed on or about the first day of May, 1921, in Ferry County, within the State and Eastern District of Washington (the exact time being to the Grand Jurors unknown); that it was a part of the said scheme that the said conspiracy was to be a continuing one and it was continued in existence, operation and execution from about the first day of May, 1921, until the 7th day of August, 1922, and that at all times between the said dates the said defendants and the divers other persons to the Grand Jurors unknown, did continue to wilfully, unlawfully and feloniously conspire, combine, confed-

erate and agree together to commit the acts hereinafter set forth in detail, and that in pursuance of the said unlawful and felonious conspiracy, combination and agreement and to effect the object of the same, the said conspirators did wilfully and unlawfully perform and do the following act:

That on or about the 25th day of May, 1922, at Republic, in Ferry County, in the State and Eastern District of Washington, and within the jurisdiction of this court, the said conspirators did wilfully and unlawfully assist, aid and abet Joseph H. Frankel in transporting and causing to be transported in interstate commerce a quantity of intoxicating liquor, to wit: about ten (10) cases of Canadian whiskey to and into the city of Portland, in the State and District of Oregon via the Great Northern Railway Company and connecting railways, [12] said Great Northern and the said connecting railways then and there being engaged in interstate commerce by line of railway in the States of Washington and Oregon, and the laws of the State of Oregon, prohibiting the manufacture and sale therein of intoxicating liquor for beverage purposes, and said intoxicating liquor not being transported, as aforesaid, for scientific, sacramental, medicinal and mechanical purposes, but was then and there fit for beverage purposes and contained more than one-half of one per centum of alcohol by volume, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT IV.

And the Grand Jurors aforesaid, upon their oaths

aforesaid, do further present:

That heretofore, to wit: on or about the 1st day of May 1921, the exact date being to the Grand Jurors unknown, in Ferry County, in the State and Eastern District of Washington, the exact place being to the Grand Jurors unknown, Cline Ledgerwood, Thomas Barker, J. Guy Dungan, Jesse B. Cooke, *alias* Dick Cooke, R. F. Carpenter, Leroy Powers and John Woods, whose other or true names are to the Grand Jurors unknown, defendants herein, did then and there wilfully, unlawfully and feloniously conspire, confederate and agree together and with divers other persons to the Grand Jurors unknown to commit the acts made offenses and crimes by the laws of the United States, to wit: the Act of Congress of March 3, 1917 (39 Stats. 1069), known as the "Bone Dry" Amendment; that is to say, the defendants did then and there wilfully, unlawfully and feloniously conspire, confederate and agree together and with divers other persons to the Grand Jurors unknown (all of the said individuals, including the said defendants and the said divers other persons, being hereafter in [13] this indictment called "conspirators," and who are intended and referred to wherever the word conspirators may hereafter appear), that they, the said conspirators, working in conjunction with each other, did aid, abet and counsel certain persons who were engaged in the unlawful transportation of liquor from the State of Washington into other states, and particularly into the town of Pocatello, in the State of Idaho; it is furthermore a part of the said unlawful and felonious

conspiracy, so entered into by the said conspirators, that they would become acquainted with persons who were engaged in the unlawful transportation of intoxicating liquor and in pursuance of the said unlawful conspiracy that they, the said conspirators, would aid and assist them in the transporting and in causing to be transported in interstate commerce quantities of intoxicating liquor from the town of Republic, in Ferry County, in the State and Eastern District of Washington; and within the jurisdiction of this court, to and into the town of Pocatello, in the State and District of Idaho, via the Great Northern Railway Company and connecting railways, the said Great Northern Railway Company and the said connecting railways then and there being engaged in interstate commerce by lines of railway in the States of Washington and Idaho, and the laws of the State of Idaho prohibiting the manufacture and sale therein of intoxicating liquor for beverage purposes, and the said intoxicating liquor not being transported, as aforesaid, for scientific, sacramental, medicinal and mechanical purposes, and the Grand Jurors do further find and present that the said conspirators did on or about the 10th day of July, 1922, at Republic, in Ferry County, in the State of Washington, and within the jurisdiction of this Court, renew and continue the said conspiracy, and that the aforesaid wilful, unlawful and felonious conspiracy, combination and agreement, as aforesaid, was formed on or about the [14] first day of May, 1921, in Ferry County, within the State and

Eastern District of Washington (the exact time being to the Grand Jurors unknown); that it was a part of the said scheme that the said conspiracy was to be a continuing one and it was continued in existence, operation and execution from about the first day of May, 1921, until the seventh day of August, 1922, and that at all times between the said dates the said defendants and the divers other persons to the Grand Jurors unknown, did continue to wilfully, unlawfully and feloniously conspire, combine, confederate and agree together to commit the acts hereinafter set forth in detail, and that in pursuance of the said unlawful and felonious conspiracy, combination and agreement and to effect the object of the same, the said conspirators did wilfully and unlawfully perform and do the following act:

That on or about the 10th day of July, 1922, at Republic in Ferry County, in the State and Eastern District of Washington, and within the jurisdiction of this court, the said conspirators did wilfully and unlawfully assist, aid and abet Joseph H. Frankel and Henry Dapper in transporting and causing to be transported in interstate commerce a quantity of intoxicating liquor, to wit: about fifteen (15) cases of Canadian whisky to and into the town of Pocatello, in the State and District of Idaho, via the Great Northern Railway Company and connecting railways, said Great Northern and the said connecting railways then and there being engaged in interstate commerce by line of railway in the States of Washington and Idaho, and the laws of the

State of Idaho prohibiting the manufacture and sale therein of intoxicating liquor for beverage purposes, and said intoxicating liquor not being transported, as aforesaid, for scientific, sacramental, medicinal and [15] mechanical purposes, but was then and there fit for beverage purposes and contained more than one-half of one per centum of alcohol by volume, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

FRANK R. JEFFREY,
United States Attorney.

Presented to the Court by the foreman of the Grand Jury, in open court, in the presence of the Grand Jury and filed in the United States District Court, August 29, 1922.

ALAN G. PAINE,
Clerk. [16]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER, J.
GUY DUNGAN, JESSE B. COOKE, R. F.
CARPENTER, LEROY POWERS and
JOHN WOODS,

Defendants.

Verdict.

We, the jury in the above-entitled cause, find Thomas Barker? Guilty, J. Guy Dungan? Guilty, Jesse B. Cooke, Not Guilty, LeRoy Powers, Not Guilty, John Woods, Not Guilty as to first Count; Thomas Barker? Guilty, J. Guy Dungan, Not Guilty, Jesse B. Cooke, Guilty, LeRoy Powers, Guilty, John Woods, Not Guilty as to Second Count; Thomas Barker? Guilty, J. Guy Dungan, Not Guilty, Jesse B. Cooke, Not Guilty, LeRoy Powers, Not Guilty, John Woods, Not Guilty as to Third Count; Thomas Barker? Guilty, J. Guy Dungan, Not Guilty, Jesse B. Cooke, Not Guilty, LeRoy Powers Not Guilty, John Woods Not Guilty as to Fourth Count as charged in the Indictment.

T. W. SYMONS, Jr.,

Foreman.

Filed in the U. S. District Court, Eastern District of Washington. Nov. 17, 1922. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [17]

United States District Court, Eastern District of Washington, Southern Division,

No. 4110.

Minutes of Judge's Notes.

PLAINTIFF:

UNITED STATES OF AMERICA.

DEFENDANT:

CLINE LEDGERWOOD, THOMAS BARKER, J.
GUY DUNGAN, JESSE B. COOKE, *alias*
DICK COOKE, R. F. CARPENTER, LE-
ROY POWERS and JOHN WOODS.

ATTORNEY FOR PLAINTIFF:

U. S. Attorney.

ATTORNEY FOR DEFENDANT:

F. C. Robertson,

E. B. Donley.

Nature of Action: Vio. Sec. 37 Penal Code. Conspiracy to violate National Prohibition Act.

JUDGE'S NOTES:

1922

Aug. 29. A true bill; order to issue bench warrant.

Sept. 2. Defendant Woods arraigned; plea "Not Guilty."

Nov. 13. Defendants arraigned; pleas "Not Guilty," jury empaneled and sworn; testimony taken Nov. 13, 14, 15, and 16; cause submitted, Verdict: Woods, not guilty, defendant discharged and bond exonerated. Powers and Cooke, guilty as to 2d count, not guilty as to 1st and 3d and 4th, Dungan, disagreed on 1st count, not guilty as to 2d, 3d and 4th, Jury unable to agree on all counts as to defendant Barker.

1923.

Jan. 4. Sentence, Powers; 1 year and 1 day, U. S. Pen. at McNeil Island, and \$2,000.00

Jan. 4. fine; Sentence: Cooke, 1 year and 1 day, U. S. Pen. at McNeil Island.

Mar. 17. Defendant Ledgerwood arraigned; Plea "Not Guilty." [18]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER, J.
GUY DUNGAN, JESSE B. COOKE, *alias*
DICK COOKE, R. F. CARPENTER, LEROY
POSERS and JOHN WOODS,

Defendants.

**Motion for Order Setting Aside and Quashing
Indictment.**

Come now the defendants, Thomas Barker, J. Guy Dungan, Jesse B. Cooke, Leroy Powers, and move the Court for an order setting aside and quashing the indictment heretofore returned and filed herein, upon the ground and for the reason that said indictment alleges separate, distinct, and specific offenses, alleges numerous, disconnected, separate, and distinct offenses and transactions specifically in counts 3 and 4 of said indictment.

In the event that the Court should deny this motion then the defendants move the Court for an order requiring plaintiff to elect as to whether the Government shall proceed to trial upon the counts

1 and 2 of said indictment or upon counts 3 and 4 of said indictment.

J. J. LAVIN,
L. B. DONLEY,

Attorneys for Defendants.

Service of the within by receipt of true copy thereof, is hereby accepted at Spokane, Washington, this 13th day of November, 1922.

Attorney for Plaintiff.

Filed in the U. S. District Court, Eastern District of Washington. Nov. 13, 1922. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [19]

Journal Entries.

In the District Court of the United States for the Eastern District of Washington, Northern Division. September, 1922, Term—51st day—Monday, November 13, 1922.

Court met pursuant to adjournment at 10 A. M.
Present: Honorable FRANK H. RUDKIN, Judge,
Frank R. Jeffrey, U. S. District Attorney, A. F. Kees, U. S. Marshal, C. H. Cummings and C. W. Gray, Bailiffs, D. L. Hyatt, Crier, and Alan G. Paine, Clerk.

PROCEEDINGS:

* * * * *

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD et al.,

Defendants.

**Order Denying Motion for Order Setting Aside and
Quashing Indictment.**

Now on this day the above-entitled cause came on regularly for trial, and counsel having argued the motion to quash and to require the plaintiff to elect as to whether the Government shall proceed to trial upon the counts 1 and 2 or 3 and 4 of said indictment, heretofore filed in the above-entitled cause, and the Court being fully advised in the premises,—

It is hereby ORDERED that said motion be and the same is hereby denied.

* * * * *

Thereupon Court adjourned unto 9:30 A. M. tomorrow.

FRANK H. RUDKIN,
Judge. [20]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER, J.
GUY DUNGAN, JESSE B. COOKE, *alias*
DICK COOKE, R. F. CARPENTER, LEROY
POWERS and JOHN WOODS,
Defendants.

**Motion for Judgment of Acquittal, Notwithstanding
Verdict of Jury.**

Come now the defendants, Leroy Powers and Dick Cooke, and upon the records, files, and proceedings herein, and upon the verdict of the jury, rendered at the trial, moves the Court for judgment of acquittal, notwithstanding the verdict of the jury, upon the ground and for the reason:

I.

That defendants were guilty of the second count of the indictment and that each of the said defendants were not guilty of the other counts of said indictment and that the finding of the jury of "not guilty" of the defendants, and each of them, of the second count of said indictment is equivalent to finding said defendants, and each of them, not guilty of the second count of said indictment, and that the verdict of the jury is therefore inconsistent.

JOSEPH J. LAVIN,

L. B. DONLEY,

Attorneys for LeRoy Powers and Dick Cooke.

Filed in the U. S. District Court, Eastern District of Washington. Nov. 21, 1922. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [21]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER, J.
GUY DUNGAN, JESSE B. COOKE, *alias*
DICK COOKE, R. F. CARPENTER, LEROY
POWERS and JOHN WOODS,

Defendants.

Motion in Arrest of Judgment.

Come now the defendants, Leroy Powers and Dick Cooke, and move the Court in arrest of judgment upon the verdict of the jury herein as to said defendants, and each of them, upon the ground and for the reason that the verdict of the jury finding defendants, herein named, and each of them, guilty of second count of said indictment and not guilty of the other counts of said indictment, is not justified by the evidence, and that the action of the jury in this regard was and is inconsistent.

JOSEPH J. LAVIN,

L. B. DONLEY,

Attorneys for Defendants.

Filed in the U. S. District Court, Eastern District of Washington. Nov. 21, 1922. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [22]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER, J.
GUY DUNGAN, JESSE B. COOKE, *alias*
DICK COOKE, R. F. CARPENTER, LEROY
POWERS and JOHN WOODS.

Defendants.

Motion for New Trial.

Come now the defendants, Leroy Powers and Dick Cooke, and move the Court for an order setting aside and vacating the verdict of the jury heretofore rendered herein (in the event that the Court shall deny the motion in arrest of judgment and motion for judgment notwithstanding verdict, heretofore served and filed herein) and to grant a new trial to defendants, and each of them, upon the second count of the indictment in said cause, upon the following ground, to wit:

I.

Irregularity in the proceedings of the Court and jury, and adverse party, and orders of this Court, abuse of discretion, by which defendants were prevented from having a fair trial.

II.

Misconduct of the jury.

III.

Accident and surprise, which ordinary prudence could not have guarded against.

IV.

Newly discovered evidence, material for the defendants, which they could not with a reasonable diligence have discovered and produced at the trial. [23]

V.

Error in law, occurring at the trial and excepted to at the time by defendants, and each of them.

This motion is made and based upon the records, files, and proceedings herein, upon the journal and court records of the clerk of said court, and upon the stenographic notes of the reporter who reported said cause.

Dated at Spokane, Washington, this 20th day of November, A. D. 1922.

JOSEPH J. LAVIN,

L. B. DONLEY,

Attorneys for Defendants, Leroy Powers and Dick Cooke.

Filed in the U. S. District Court, Eastern District of Washington. Nov. 21, 1922. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [24]

AND AFTERWARD, on the 4th day of January, 1922, the same being the 84th day of the regular September, 1922, term of said court, court convened pursuant to adjournment—Present: Honorable FRANK H. RUDKIN, United States District Judge for the Eastern District of Washington, presiding.

Among the proceedings had were the following:

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEROY POWERS,

Defendant.

Sentence.

Now on this day into court comes the above-named defendant for sentence, and being informed by the Court of his conviction herein of record, he is asked by the Court if he has any legal cause to show why the judgment of this Court should not now be pronounced in his case; he nothing says, save as he before hath said.

WHEREUPON it is now by the Court CONSIDERED and ADJUDGED that said defendant, now before the court, be confined in the United States Penitentiary at McNeil's Island, State of Washington, or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States, for the period of One year & one day from this date, and pay a fine of two thousand dollars, to stand committed until he is duly discharged by law; and now the said defendant is committed to the custody of the Marshal of the United States for the Eastern District of Washington, who will carry this sentence into execution.

Filed in the U. S. District Court, Eastern District of Washington. Jan. 4, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [25]

Journal Entries.

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

September, 1922 Term—84th day—Thursday, Jan-
uary 4, 1923.

Court met pursuant to adjournment at 10 A. M.
Present: Honorable FRANK H. RUDKIN,
Judge, Frank R. Jeffrey, U. S. District Attor-
ney, A. F. Kees, U. S. Marshal, C. W. Gray
and C. H. Cummings, Bailiffs, D. L. Hyatt,
Crier, and Alan G. Paine, Clerk.

PROCEEDINGS:

* * * * *

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD et al.,

Defendants.

Order Overruling Motions.

The above-entitled cause having come on regu-
larly for hearing on this date on motion for acquit-
tal, motion for new trial and motion for arrest of
judgment, and said motions having been argued
by counsel, and the Court being fully advised in
the premises,

It is ORDERED that said motions be, and the same are hereby denied.

* * * * *

Thereupon Court adjourned until 10 A. M. tomorrow.

FRANK H. RUDKIN,

Judge. [26]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

September, 1922, Term—84th day—Thursday, January 4, 1923.

Court met pursuant to adjournment at 10 A. M.
Present: Honorable FRANK H. RUDKIN, Judge,
Frank R. Jeffrey, U. S. District Attorney, A. F. Kees, U. S. Marshal, C. W. Gray and C. H. Cummings, Bailiffs, D. L. Hyatt, Crier, and Alan G. Paine, Clerk.

PROCEEDINGS:

* * * * *

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD, LEROY POWERS,
JESSE B. COOKE et al.,

Defendants.

Order Fixing Time to File Bill of Exceptions, etc.

Now on this day, counsel for the above-named defendants appeared in Court, and moved for ex-

tension of time in which to file bill of exceptions in the above-entitled cause, and the Court being fully advised in the premises,

It is ORDERED that defendants be granted sixty days from this date in which to file their bill of exceptions, and it is further ordered that supersedeas bond be and hereby is fixed in the sum of Three Thousand Dollars each.

* * * * *

Thereupon Court adjourned until 10 A. M. tomorrow.

FRANK H. RUDKIN,
Judge. [27]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 4110.

UNITED STATES,

Plaintiff,

vs.

CLYNE LEDGERWOOD et al.,

Defendants.

**Order Extending Time Sixty Days to File Bill of
Exceptions.**

This matter coming on for hearing upon the motion of defendant Roy Powers,

IT IS HEREBY ORDERED that the defendant, Roy Powers, be, and he is hereby granted sixty days from March 5th, 1923, in which to prepare,

have signed and file a bill of exceptions in the above-entitled cause.

Done in open court this 24th day of February, 1923.

JEREMIAH NETERER,
Judge.

O. K.—F. R. JEFFREY,
U. S. Attorney.

Filed in the U. S. District Court, Eastern District of Washington. Feb. 24, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [28]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 4110.

UNITED STATES,

Plaintiff,

vs.

CLYNE LEDGERWOOD et al.,

Defendants.

Order Extending Time Thirty Days to File Bill of Exceptions.

This matter coming on for hearing upon the motion of defendant Roy Powers,—

IT IS HEREBY ORDERED, that the defendant, Roy Powers, be and he is hereby granted thirty days from May 5th, 1923, in which to prepare, have signed and file a bill of exceptions in the above entitled cause.

Done in open court this 25th day of April, 1923.

JEREMIAH NETERER,
Judge.

O. K.—F. R. JEFFREY,
U. S. Atty.

Filed in the U. S. District Court, Eastern District of Washington. Apr. 25, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [29]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLYNE LEDGERWOOD, J. GUY DUNGAN,
ROY POWERS, JESSE B. COOKE,
THOMAS BARKER and JOHN WOODS,
Defendants.

Petition for Writ of Error.

Comes now Roy Powers, one of the defendants herein, and says that on or about the 5th day of January, 1923, this Court entered sentence and judgment against the said defendant, Roy Powers, in which judgment and proceedings had thereunto in this cause certain errors were committed to the prejudice of defendant, all of which will appear more in detail from the assignment of errors, which is filed with this petition.

WHEREFORE, the said Roy Powers prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals in and for the Ninth Circuit of the United States, for the correction of the errors so complained of, and that the Court fix the bond to operate also as a supersedeas, and that a transcript of the record, proceedings and papers in said cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

MUNTER & MUNTER,

POWELL & HERMAN,

Attorneys for Defendant Roy Powers.

Served 4/28/23.

H. SYLVESTER GARVIN,

Asst. U. S. Attorney.

Filed in the U. S. Dist. Court, Eastern Dist. of Washington. April 28, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [30]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLYNE LEDGERWOOD, J. GUY DUNGAN,
ROY POWERS, JESSE B. COOKE,
JOHN WOODS and THOMAS BARKER.

Defendants.

Order Allowing Writ of Error.

On this 28 day of April, 1923, came one of the defendants Roy Powers and filed herein and presented to the Court his petition praying for the allowance of a writ of error, and filed therewith his assignments of error, intended to be urged by him, and prayed that the bond to be given to operate also as a supersedeas and stay bond, be fixed by the Court, and also that a transcript of the record and proceedings and papers upon which judgment and sentence herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and such other and further proceedings may be had as may be proper in the premises.

In consideration thereof, the Court does allow the writ of error, and the bond for such writ of error and also to operate as a supersedeas, is fixed in the sum of \$3000.00, and upon defendant giving such bond, all proceedings to enforce said sentence and judgment to be stayed, until such writ of error is determined.

JEREMIAH NETERER,

United States District Judge.

Served 4/28/23.

H. SYLVESTER GARVIN,

Asst. U. S. Atty.

Filed in the U. S. District Court, Eastern District of Washington. Apr. 28, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [31]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLYNE LEDGERWOOD, J. GUY DUNGAN,
ROY POWERS, JESSE B. COOKE,
JOHN WOODS and THOMAS BARKER,
Defendants.

Writ of Error (Copy).

The President of the United States to the Honorable Judge of the District Court of the United States, for the Eastern District of Washington, Northern Division, GREETING:

Because in the records and proceedings as also in the rendition of judgment and sentence on a plea, which in the said District Court before you, or some of you, between the above named defendants and particularly the defendant Roy Powers, plaintiff in error (defendant in the lower court), and the United States of America, plaintiff in error (plaintiff in the lower court), manifest error hath happened, to the great damage of the said Roy Powers, plaintiff in error as by his complaint appears:

We being willing that error, if any hath happened, shall be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf

duly command you, if judgment therein be given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, together with this writ, so that you have the same *at the same* at the city of San Francisco, in the State of California, within thirty days from the date of this writ in the said Circuit Court of Appeals, to be then and there held, that the [32] records and proceedings aforesaid, being inspected, this said Circuit Court of Appeals may cause further to be done therein to correct that error of what right and according to the law and custom of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 28th day of April, 1923, in the year of our Lord one thousand nine hundred twenty-three.

ALAN G. PAINE,
Clerk of the United States District Court, for the
Eastern District of Washington, Northern
Division.

Approved by:

JEREMIAH NETERER,
Judge.

Served 4/28/23.

H. SYLVESTER GARVIN,
Asst. U. S. Atty.

Filed in the U. S. Dist. Court, Eastern District of Washington. Apr. 28, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [33]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLYNE LEDGERWOOD, J. GUY DUNGAN,
ROY POWERS, JESSE B. COOKE,
JOHN WOODS and THOMAS BARKER,
Defendants.

Citation on Writ of Error (Copy).

The President of the United States, to the United
States of America, and the Messrs. F. R.
JEFFREY and H. SYLVESTER GARVIN,
Your Attorneys, GREETING:

You are hereby cited and admonished to be and
appear at the United States Circuit Court of Ap-
peals for the Ninth Circuit, to be held at the City
of Seattle, in the State of Washington, within thirty
day from the date of this writ, pursuant to a writ
of error, regularly issued, and which is on file in the
office of the clerk of the District Court of the United
States, for the Eastern District of Washington,
Northern Division, in an action pending in said
court, wherein Roy Powers is plaintiff in error
(defendant in the lower court), and the United
States of America, is defendant in error (plaintiff

in the lower court), and to show cause, if any there be, why the judgment in said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States of America, this 28th day of Apr. 1923.

JEREMIAH NETERER,
United States District Judge.

Attest: ALAN G. PAINE,
Clerk of Said Court.

Served 4/28/23.

H. SYLVESTER GARVIN,
Asst. U. S. Atty. [34]

Filed in the U. S. District Court, Eastern District of Washington. April 28, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [35]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER,
J. GUY DUNGAN, JESSE B. COOKE, *alias*
DICK COOKE, N. F. CARPENTER, LE-
ROY POWERS, Otherwise Known as ROY
POWERS and JOHN WOODS,

Defendants.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That we, Leroy Powers, otherwise known as Roy Powers, as principal, and W. J. Hall, unmarried, and Mary McCullough, his wife, as sureties, are held and firmly bound unto the United States of America, in the full and just sum of Three Thousand (\$3,000.00) Dollars, to be paid to the United States of America, to which payment well and truly to be paid, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this — day of May, in the year of our Lord, one thousand nine hundred twenty-three.

WHEREAS, lately at the September term, A. D. 1922, of the District Court of the United States, for the Eastern District of Washington, Northern Division, in a suit pending in said court, between the United States of America, plaintiff, and Leroy Powers, otherwise known as Roy Powers, defendant, a judgment and sentence was rendered against the Leroy Powers, otherwise known as Roy Powers, and the said Leroy Powers, otherwise known as Roy Powers, has obtained a writ of error from [36] the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America, to be

and appear in the United States Circuit Court of Appeals, for the Ninth Circuit at the city of San Francisco, State of California, — days from and after the date of said citation, which citation has been duly served.

Now, the condition of the above obligation is such that if the said Leroy Powers, otherwise known as Roy Powers, shall appear, either in person or by attorney, in the United States Circuit Court of Appeals for the Ninth Circuit, on such day or days as may be appointed for the hearing of said cause, in said court, and prosecute his said writ of error, and abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in the execution of the judgment and sentence appealed from, as said court may direct, if the judgment and sentence against him shall be affirmed, or the writ of error or appeal is dismissed; and if he shall appear for trial in the District Court of the United States, for the Eastern District of Washington, Northern Division, on such day or days as may be appointed for a retrial, by said District Court, and abide by and obey all orders made by said court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth

Circuit, then the above obligation to be void; otherwise to remain in full force, virtue and effect.

LEROY POWERS, Principal.

W. J. HALL. (Seal)

B. W. RIORDAN. (Seal)

O. J. McCULLOUGH. (Seal)

MARY McCULLOUGH. (Seal)

O. K.—FRANK R. JEFFREY,

U. S. Atty.

Filed in the U. S. District Court, Eastern District of Washington. May 9, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [37]

State of Washington,

County of Spokane,—ss.

W. J. Hall, unmarried, and B. W. Riordan, unmarried and O. J. McCullough, and Mary McCullough, his wife, being first duly sworn according to law, on their oaths respectively says, each for himself, and not one for the other: That he is one of the sureties who signed the within bond; that he is above the age of twenty-one years; that he is a *bona fide* resident of the State of Washington, and a property holder therein; that he is worth the sum of Three Thousand (\$3,000) Dollars, in his own individual and separate property in said state, over and above all his debts and liabilities, and property exempt from execution.

B. W. RIORDAN.

W. J. HALL.

O. J. McCULLOUGH.

MARY McCULLOUGH.

Subscribed and sworn to before me this 5th day of May, 1923.

J. E. RITTER,
Notary Public for the State of Washington, Residing in Republic.

Approved May 9, 1923.

J. STANLEY WEBSTER,
Judge.

Approved May 5th, 1923.

[Seal] JOHN E. RITTER,
United States Commissioner. [38]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 4110.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER,
J. GUY DUNGAN, JESSE B. COOKE,
alias DICK COOKE, F. R. CARPENTER,
LEROY POWERS, Otherwise Known as
ROY POWERS, and JOHN WOODS,
Defendants.

Assignment of Errors.

Comes now the defendant, Leroy Powers, otherwise known as Roy Powers, and herein files and claims his assignment of errors, committed by the trial judge in the proceedings of the trial in the above-entitled cause, to wit:

I.

That the Court erred in refusing to quash the indictment in the above-entitled cause as requested by said Leroy Powers, otherwise known as Roy Powers, in his motion for an order setting aside and quashing the said indictment upon the grounds and reasons stated in said motion.

II.

That the Court erred in not granting an order requiring the plaintiff to elect as to whether the Government should proceed to trial upon counts one and two of said indictment or upon counts three and four of said indictment as requested by said defendant in his motion now on file herein.

III.

That the Court erred in overruling said defendant's motion for judgment of acquittal notwithstanding the verdict upon the grounds and for the reasons stated in said motion which is now on file herein. [39]

IV.

That the Court erred in not granting said defendant's motion in arrest of judgment upon the grounds and reasons stated in said motion to which reference is hereby made.

V.

That the Court erred in refusing to grant a new trial to said defendant upon the grounds and reasons stated in said motion.

MUNTER & MUNTER,
POWELL & HERMAN,

Attorneys for Defendant, Leroy Powers, Otherwise known as Roy Powers.

Served 4/28/23.

H. SYLVESTER GARVIN,
Asst. U. S. Atty.

Filed in the U. S. District Court, Eastern District
of Washington. Apr. 28, 1923. Alan G. Paine,
Clerk. By A. P. Rumburg, Deputy. [40]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 4110.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER,
J. GUY DUNGAN, JESSE B. COOKE,
alias DICK COOKE, N. F. CARPENTER,
LEROY POWERS, Otherwise Known as
ROY POWERS, and JOHN WOODS,
Defendants.

Before Honorable J. STANLEY WEBSTER,
District Judge.

Appearances.

For the Plaintiff:

FRANK R. JEFFREY, U. S. District Attorney.
H. SYLVESTER GARVIN, Asst. U. S. District
Attorney.

For the Defendants:

MUNTER & MUNTER, and
POWELL & HERMAN. [41]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER, J.
GUY DUNGAN, JESSE B. COOKE,
alias DICK COOKE, N. F. CARPENTER,
LEROY POWERS, Otherwise Known as
ROY POWERS, and JOHN WOODS,

Defendants.

**Notice of Preparation and Filing of Bill of
Exceptions.**

To the Above-named Plaintiff and to Messrs.
Frank R. Jeffrey and H. Sylvester Garvin,
Your Attorneys:

You and each of you are hereby notified that
the defendant LeRoy Powers, otherwise known as
Roy Powers, has prepared and filed with the Clerk
of the above-entitled court a proposed bill of ex-
ceptions, a copy of which is herewith served upon
you.

Dated at Spokane, Washington, this 21st day of
May, 1923.

MUNTER & MUNTER,

POWELL & HERMAN,

Attorneys for Defendant Roy Powers.

Service of the above and foregoing notice and of the bill of exceptions attached thereto, by true copy thereof, is hereby acknowledged this 22d day of May, 1923.

FRANK R. JEFFREY,
U. S. District Attorney.

Filed in the U. S. District Court, Eastern District of Washington. May 29, 1923. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [42]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER,
J. GUY DUNGAN, JESSE B. COOKE,
alias DICK COOKE, N. F. CARPENTER,
LEROY POWERS, Otherwise Known as
ROY POWERS, and JOHN WOODS,
Defendants.

Stipulation Re Bill of Exceptions.

IT IS HEREBY AGREED AND STIPULATED by and between Frank R. Jeffrey, United States District Attorney, attorney for the United States of America, plaintiff, and Messrs. Munter & Munter and Powell & Herman, attorneys for defendant Leroy Powers, otherwise known as Roy Powers:

I.

That the attached bill of exceptions is a true and correct statement of the matters and things therein alleged and set forth.

II.

IT IS FURTHER AGREED AND STIPULATED by and between the same parties that Honorable J. Stanley Webster, United States Judge for the Eastern District of Washington, successor to Honorable Frank H. Rudkin, the Judge before whom the above-entitled action was tried, may certify and settle the attached bill of exceptions.

Dated: at Spokane, Washington, this 28th day of May, A. D. 1923.

FRANK R. JEFFREY,
United States District Attorney.
POWELL & HERMAN,
MUNTER & MUNTER,
Attorneys for Defendant Leroy Powers.

Filed in the U. S. District Court, Eastern District of Washington. May 29, 1923. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [43]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER,
J. GUY DUNGAN, JESSE B. COOKE,
alias DICK COOKE, N. F. CARPENTER,
LEROY POWERS, Otherwise Known as
ROY POWERS, and JOHN WOODS,
Defendants.

Bill of Exceptions.

APPEARANCES.

For the Plaintiff:

FRANK R. JEFFREY, U. S. District Attorney.
H. SYLVESTER GARVIN, Asst. District At-
torney.

For the Defendant:

MUNTER & MUNTER and
POWELL & HERMAN.

BE IT REMEMBERED, That the above-entitled
cause came on regularly for hearing in the above-
entitled court on the —— day of November, 1922, at
10 o'clock A. M. before the Hon. F. H. Rudkin,
then District Judge, plaintiff appearing by Frank
R. Jeffrey, U. S. District Attorney and H. Sylves-
ter Garvin, Asst. U. S. District Attorney, and the

defendant appearing in person and by his attorneys, Munter & Munter and Powell & Herman, thereupon the following proceedings were had and done to wit:

Counsel for defendant Leroy Powers, otherwise known as Roy Powers, brought on said defendant's action to quash the indictment in the above-entitled cause, and did also bring on [44] for hearing said defendant's motion in the alternative to compel the plaintiff to elect as to which counts said defendant would be prosecuted in the event that the motion to quash said indictment was overruled. Both the motion to quash and the motion in the alternative to compel the plaintiff to elect were overruled, and to each of the Court's rulings on each of the said motions, the defendant did except and an exception to each was duly allowed.

THEREUPON, a jury was duly empaneled and sworn to try the cause.

Testimony was introduced by the plaintiff which tended to support all four counts of said indictment. Defendant excepted to the introduction of testimony supporting all four of the said counts of the said indictment. The objection of defendant to the introduction of testimony tending to support all four of the counts of said indictment was overruled to all of which the said defendant excepted and as to all of which exceptions were allowed.

At the close of the plaintiff's testimony in support of its prosecution, said defendant again renewed defendant's motion to quash said indictment on the ground that there was a misjoinder of

counts which motion was denied, to which ruling said defendant excepted, and to which ruling defendant was allowed an exception, and said defendant did thereupon renew said defendant's motion in the alternative to compel the plaintiff to elect as to which counts of said indictment, said plaintiff would prosecute said defendant, which motion to compel an election was overruled to which the said defendant excepted and to which ruling said defendant was allowed an exception.

Thereafter defendant introduced testimony on his own behalf. [45]

Thereafter testimony was introduced by the Government in rebuttal of defendant's testimony.

Thereafter the counsel addressed the jury and the jury was instructed by the Hon. F. H. Rudkin, then District Judge.

The jury thereafter returned a verdict of guilty as to this defendant on the second count of the said indictment, and not guilty on the other counts of said indictment.

Thereafter said defendant made a motion to arrest said judgment, notwithstanding the verdict of the jury and a motion for new trial, all of which motions were overruled by the Honorable Frank H. Rudkin, then United States District Judge to all of which rulings the defendant excepted and to all of which rulings the defendant was allowed an exception. [46]

Certificate of Judge to Bill of Exceptions.

United States of America,
Eastern District of Washington,—ss.

I, J. Stanley Webster, U. S. District Judge for the Eastern District of Washington, and the successor to the Judge before whom the above-entitled action was tried, to wit, the cause entitled United States of America, Plaintiff, vs. Cline Ledgerwood, Thomas Barker, J. Guy Dungan, Jesse B. Cooke, *alias* Dick Cooke, N. F. Carpenter, Leroy Powers, otherwise known as Roy Powers and John Woods, Defendants, which is No. 4110, in said District Court, DO HEREBY CERTIFY, that the matters and proceedings embodied in the foregoing bill of exceptions are matters and proceedings occurring in said cause and the same are hereby made a part of the record therein; and that the above and foregoing bill of exceptions contains all the material facts, matters and proceedings heretofore occurring in said cause and not already a part of the record therein; and that the above and foregoing bill of exceptions was duly and regularly filed with the Clerk of the said Court and thereafter duly and regularly served within the time authorized by law; and that no amendments were proposed to said bill of exceptions excepting such as are embodied therein that due and regular written notice of application to the Court for settlement and certifying said bill of exceptions was made and served upon the plaintiff, which notice specified the place and time, to settle and certify said bill of exceptions.

Dated at Spokane, Washington, this 29th day of May, 1923.

J. STANLEY WEBSTER,
Judge. [47]

Filed in the U. S. District Court, Eastern District of Washington. May 29, 1923. Alan G. Paine. Eva M. Hardin, Deputy. [48]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 4110.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

CLINE LEDGERWOOD, THOMAS BARKER,
J. GUY DUNGAN, JESSE B. COOK,
alias DICK COOKE, N. F. CARPENTER,
LEROY POWERS, Otherwise Known as
ROY POWERS, and JOHN WOODS,
Defendants.

Stipulation Re Citation on Writ of Error.

It is hereby agreed and stipulated by and between the United States of America, Plaintiff, and Leroy Powers, otherwise known as Roy Powers, Defendant, that the citation on the writ of error shall admonish the United States of America, and Messrs. Frank R. Jeffrey and H. Sylvester Garvin, their attorneys, to be and appear at the United

States Circuit Court of Appeals in and for the Ninth Circuit on the 5th day of June, 1923.

FRANK R. JEFFREY,
United States District Attorney.
MUNTER & MUNTER,
POWELL & HERMAN,
Attorneys for Defendant Leroy Powers.

Filed in the U. S. District Court, Eastern District of Washington. May 29, 1923. Alan G. Paine. A. P. Rumburg, Deputy. [49]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 4110.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER,
J. GUY DUNGAN, JESSE B. COOKE,
alias DICK COOKE, R. F. CARPENTER,
LEROY POWERS, Otherwise Known as
ROY POWERS, and JOHN WOODS.

Defendants.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

Please make up and certify to the Circuit Court of Appeals, Ninth Judicial Circuit, the following papers and records in the above-entitled cause:

1. Indictment.
2. Verdict of the jury.
3. Minutes of the Judge's notes.
4. Motion to quash indictment and to compel the Government to elect as to which counts it would prosecute defendant Powers.
5. Order denying said motion.
6. Motion of defendant for judgment of acquittal notwithstanding the verdict of the jury.
7. Motion in arrest of judgment.
8. Motion for new trial.
9. Judgment and sentence of the Court.
10. All journal entries or orders made by the Court denying each and all of the motions and applications made by defendant.
11. Order allowing sixty days to file transcript.
12. Order allowing sixty days additional to file transcript.
13. Order allowing thirty days additional to file transcript. [50]
14. Petition for writ of error.
15. Order allowing writ of error and fixing bond on writ of error in the sum of Three Thousand (\$3000.00) Dollars.
16. Writ of error.
17. Citation.
18. Bond and approval thereof.
19. Defendant's assignments of error.
20. Notice on bill of exceptions.
21. Stipulation that Hon. J. Stanley Webster certify and settle bill of exceptions.
22. Defendant's bill of exceptions duly certified.

23. Stipulation extending time of citation on writ of error.

24. Praeceptum.

POWELL & HERMAN,

MUNTER & MUNTER,

Attorneys for Defendant Leroy Powers.

Filed in the U. S. District Court, Eastern District of Washington. May 14, 1923. Alan G. Paine, Clerk Eva M. Hardin, Deputy. [51]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLINE LEDGERWOOD, THOMAS BARKER,
J. GUY DUNGAN, JESSE B. COOKE,
alias DICK COOKE, N. F. CARPENTER,
LEROY POWERS, Otherwise Known as
ROY POWERS and JOHN WOODS,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,

Eastern District of Washington,—ss.

I, Alan G. Paine, Clerk, of the District Court of the United States for the Eastern District of

Washington, do hereby certify the foregoing printed pages, to be a full, true, correct and complete copy of so much of the record, papers, bill of exceptions and other proceedings so called for by the defendant and plaintiff in error in its praecipe therefor and as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on writ of error from the judgment of the District Court of the United States for the Eastern District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California.

I further certify that I hereto attach and herewith transmit the original writ of error and the original citation issued in this cause.

I further certify that the cost of preparing, certifying [52] and printing the foregoing transcript is the sum of Eighteen and 5/100 Dollars (\$18.05), and that the same has been paid to me by the attorneys for defendant, and plaintiff in error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court of Spokane, in said district, this 31st day of May, A. D. 1923.

[Seal]

ALAN G. PAINE,
Clerk. [53]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLYNE LEDGERWOOD, J. GUY DUNGAN,
ROY POWERS, JESSE B. COOKE,
JOHN WOODS and THOMAS BARKER,
Defendants.

Writ of Error (Original).

The President of the United States to the Honorable
Judge of the District Court of the United
States, for the Eastern District of Washing-
ton, Northern Division, GREETING:

Because in the records and proceedings as also in
the rendition of judgment and sentence on a plea,
which in the said District Court before you, or
some of you, between the above-named defendants
and particularly the defendant Roy Powers, plain-
tiff in error (defendant in the lower court), and
the United States of America, defendant in error
(plaintiff in the lower court), manifest error hath
happened, to the great damage of the said Roy
Powers, plaintiff in error as by his complaint ap-
pears:

We being willing that error, if any hath hap-
pened, shall be duly corrected, and full and speedy

justice done to the parties aforesaid, in this behalf duly command you, if judgment therein be given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, together with this writ, so that you have the same at the same at the City of San Francisco, in the State of California, within thirty days from the date of this writ in the said Circuit Court of Appeals, to be then and there held, that the records and proceedings aforesaid, being inspected, this said Circuit Court of [54] Appeals may cause further to be done therein to correct that error of what right and according to the law and custom of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 28th day of April, 1923, in the year of our Lord one thousand nine hundred twenty-three.

ALAN G. PAINE,
Clerk of the United States District Court, for the
Eastern District of Washington, Northern
Division.

Allowed by:

JEREMIAH NETERER, .
Judge.

Served 4/28/23.

H. SYLVESTER GARVIN,
Asst. U. S. Atty.

[Endorsed]: No. 4110. United States of America vs. Cline Ledgerwood et al. Writ of Error. Filed in the U. S. District Court, Eastern District of Washington. Apr. 28, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [55]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 4110.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLYNE LEDGERWOOD, J. GUY DUNGAN,
ROY POWERS, JESSE B. COOKE,
JOHN WOODS and THOMAS BARKER,
Defendants.

Citation on Writ of Error (Original).

The President of the United States to the United States of America, and the Messrs. F. R. JEFFREY and H. SYLVESTER GARVIN, Your Attorneys, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of Seattle, in the State of Washington, within thirty days from the date of this writ, pursuant to a writ of error, regularly issued, and which is on file in the office of the clerk of the District Court

of the United States, for the Eastern District of Washington, Northern Division, in an action pending in said court, wherein Roy Powers is plaintiff in error (defendant in the lower court), and the United States of America, is a defendant in error (plaintiff in the lower court), and to show cause, if any there be, why the judgment in said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS The Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States of America, this 28th day of April, 1923.

JEREMIAH NETERER,
United States District Judge.
Attest: ALAN G. PAINE,
Clerk of said Court.

Served 4/28/23.

H. SYLVESTER GARVIN,
Asst. U. S. Atty.

[Endorsed]: No. 4110. United States of America vs. Cline Ledgerwood et al. Citation. Filed in the U. S. District Court, Eastern Dist. of Washington. Apr. 28, 1923. Alan G. Paine, Clerk. A. P. Rumburg, [56]

[Endorsed]: No. 4047. United States Circuit Court of Appeals for the Ninth Circuit. Leroy Powers, Otherwise Known as Roy Powers, Plaintiff in Error, vs. The United States of America,

Defendant in Error. Transcript of Record.
Upon Writ of Error to the United States District
Court of the Eastern District of Washington,
Northern Division.

Received June 4, 1923.

F. D. MONCKTON,
Clerk.

Filed June 15, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Ap-
peals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

